

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

MATTHEW KENNETH GILBERT
18762 Lister Lane
Huntington Beach, CA 92648

Land Surveyor License No. L 6723,

Respondent.

Case No. 959-A

DECISION

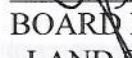
The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in this matter. In adopting the attached Stipulated Surrender of License and Order, the Board for Professional Engineers, Land Surveyors, and Geologists hereby makes the following corrections to the Accusation in this matter:

All references to the City of Newport Beach ("City") in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27 [except for the reference on Line 16, Page 9], 28 [except for the reference on Line 2, Page 10], 29 [except for the reference on Line 16, Page 10], 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 50 [except for the reference on Line 10, Page 19], and 52 are deemed to be references to the County of Orange ("County").

This Decision shall become effective on September 28, 2012.

IT IS SO ORDERED August 30, 2012.

Original Signed


BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 WILLIAM A. BUSS
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
10 **GEOLOGISTS**
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 959-A

13 **MATTHEW KENNETH GILBERT**
18762 Lister Lane
14 **Huntington Beach, CA 92646**
15 **Land Surveyor License No. L 6723**

OAH No. 2011100189

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 Respondent.

17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Board for Professional Engineers, Land Surveyors, and
19 Geologists of the Department of Consumer Affairs the parties hereby agree to the following
20 Stipulated Surrender of License and Order which will be submitted to the Board for approval and
21 adoption as the final disposition of the Accusation.

22 **PARTIES**

23 1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for
24 Professional Engineers, Land Surveyors, and Geologists. He brought this action solely in his
25 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
26 State of California, by William A. Buess, Deputy Attorney General.

27 2. Matthew Kenneth Gilbert (Respondent) is representing himself in this proceeding and
28 has chosen not to exercise his right to be represented by counsel.

1 3. On or about April 17, 1992, the Board for Professional Engineers, Land Surveyors,
2 and Geologists issued Land Surveyor License No. L 6723 to Matthew Kenneth Gilbert
3 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
4 charges brought in Accusation No. 959-A and will expire on September 30, 2012, unless
5 renewed.

6 JURISDICTION

7 4. Accusation No. 959-A was filed before the Board for Professional Engineers, Land
8 Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending
9 against Respondent. The Accusation and all other statutorily required documents were properly
10 served on Respondent on April 25, 2011. Respondent timely filed his Notice of Defense
11 contesting the Accusation. A copy of Accusation No. 959-A is attached as Exhibit A and
12 incorporated by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, and understands the charges and allegations in
15 Accusation No. 959-A. Respondent also has carefully read, and understands the effects of this
16 Stipulated Surrender of License and Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

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ORDER

IT IS HEREBY ORDERED that Land Surveyor License No. L 6723, issued to Respondent Matthew Kenneth Gilbert, is voluntarily surrendered and accepted by the Board for Professional Engineers, Land Surveyors, and Geologists.

1. This voluntary surrender of Respondent's Land Surveyor License No. L 6723 and the acceptance of the surrendered license by the Board shall be deemed a disciplinary action and shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board for Professional Engineers, Land Surveyors, and Geologists.

2. Respondent shall lose all rights and privileges as a Land Surveyor in California as of the effective date of the decision of the Board adopting this stipulation, including the right to use any of the restricted titles associated with this license.

3. Respondent shall cause to be delivered to the Board his pocket identification card(s) and wall certificate for his license on or before the effective date of the decision of the Board adopting this stipulation.

4. Respondent agrees not to petition for reinstatement of the surrendered license. Respondent agrees not to apply for any license issued by the Board for three (3) years from the effective date of this surrender. Respondent understands and agrees that if he ever applies for any license issued by the Board, the Board shall treat the application as a new application for licensure. Respondent must comply with all of the laws, regulations, and procedures for licensure in effect at the time the application is filed, including but not limited to submitting a completed application and the requisite fee and taking and passing the required examination(s), and all of the charges and allegation contained in Accusation No. 959-A shall be deemed to be true, correct, and admitted by Respondent when the licensing agency determines whether to grant or deny the application.

5. The Board agrees to waive the reimbursement of its costs of investigation and prosecution in this matter.

///

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED:

7/11/2012*original signed*MATTHEW KENNETH GILBERT
RespondentENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

WILLIAM A. BUSS
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: _____

MATTHEW KENNETH GILBERT
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Dated: *July 11, 2012*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

Original Signed
WILLIAM A. BUSS
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the Stipulated Summary of Facts and Order. I understand the stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated Summary of Facts and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED:

MATTHEW KENNETH GILBERT
Registration

RESPONSEMENT

The foregoing Stipulated Summary of Facts and Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Date: July 11, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LINDAKIS
Serving Deputy Attorney General

WILLIAM A. BURR
Deputy Attorney General
Attorneys for Respondent

90301070217
70867494400

Exhibit A

Accusation No. 959-A

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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
10 **GEOLOGISTS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 959-A

13 **MATTHEW KENNETH GILBERT**

14 **18762 Lister Lane**
Huntington Beach, CA 92646
15 **Land Surveyor License No. L 6723**

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Arnold (Complainant) brings this Accusation solely in her official capacity as
21 the Interim Executive Officer of the Board for Professional Engineers, Land Surveyors, and
22 Geologists, Department of Consumer Affairs.

23 2. On or about April 17, 1992, the Board for Professional Engineers, Land Surveyors,
24 and Geologists issued Land Surveyor License Number L 6723 to Matthew Kenneth Gilbert
25 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on September 30, 2012, unless renewed.

27 ///

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers, Land Surveyors, and Geologists ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 8780 of the Code states:

"The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

"By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

...

"(b) Any negligence or incompetence in his or her practice of land surveying.

...

"(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying."

STATUTORY PROVISIONS

6. Section 8761 of the Code states in pertinent part:

"(a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice. All maps, plats, reports, descriptions, or other documents shall be prepared by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license

1 number. If the document has multiple pages or sheets, the signature, the seal or stamp, date of
2 signing and sealing or stamping, and expiration date of the license shall appear, at a minimum, on
3 the title sheet, cover sheet or page, or signature sheet.

4 “(b) Interim maps, plats, reports, descriptions, or other documents shall include a notation
5 as to the intended purpose of the map, plat, report, description, or other document, such as
6 ‘preliminary’ or ‘for examination only.’

7 “(c) All final maps, plats, reports, descriptions, or other documents issued by a licensed
8 land surveyor or civil engineer authorized to practice land surveying shall bear the signature and
9 seal or stamp of the licensee, the date of signing and sealing or stamping and the expiration date
10 of the license.”

11 7. Section 8762 of the Code states:

12 ...

13 “(c) The record of survey required to be filed pursuant to this section shall be filed within
14 90 days after the setting of boundary monuments during the performance of a field survey or
15 within 90 days after completion of a field survey, whichever occurs first.”

16 “(d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for
17 reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day
18 time period shall be extended until the time at which the reasons for delay are eliminated. If the
19 licensed land surveyor or licensed civil engineer cannot comply with the time limit, he or she
20 shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter
21 stating that he or she is unable to comply. The letter shall provide an estimate of the date for
22 completion of the record of survey, the reasons for the delay, and a general statement as to the
23 location of the survey, including the assessor’s parcel number or numbers.”

24 8. Section 8767 of the Code states in pertinent part:

25 ...

26 “[Otherwise] the county surveyor shall return it to the person who presented it, together
27 with a written statement of the changes necessary to make it conform to the requirements of
28 Section 8766. The licensed land surveyor or registered civil engineer submitting the record of

1 survey may then make the agreed changes and not those matters which cannot be agreed upon in
2 accordance with the provisions of Section 8768 and shall resubmit the record of survey within 60
3 days, or within the time as may be mutually agreed upon by the licensed surveyor or registered
4 engineer and the county surveyor, to the county surveyor for filing pursuant to Section 8768.”

5 9. Section 8773.2 of the Code states in pertinent part:

6 “(a) A ‘corner record’ submitted to the county surveyor or engineer shall be examined by
7 him or her for compliance with subdivision (d) or Section 8765 and Sections 8773, 8773.1, and
8 8773.4, endorsed with a statement of his or her examination, and filed with the county surveyor or
9 returned to the submitting party within 20 working days after receipt.

10 “(b) In the event the submitted ‘corner record’ fails to comply with the examination criteria
11 of subdivision (a), the county surveyor or engineer shall return it to the person who submitted it
12 together with a written statement of the changes necessary to make it conform to the requirements
13 of subdivision (a). The licensed land surveyor or licensed civil engineer submitting the corner
14 record may then make the agreed changes in compliance with subdivision (a) and not those
15 matters that cannot be agreed upon in accordance with the provisions of subdivision (c), and shall
16 resubmit the corner record within 60 days, or within the time as may be mutually agreed upon by
17 the licensed land surveyor or licensed civil engineer and the county surveyor, to the county
18 surveyor for filing pursuant to subdivision (c).”

19 **COST RECOVERY**

20 10. Section 125.3 of the Code provides, in pertinent part, that the board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Negligence-Failure to Sign Documents)

26 11. Respondent is subject to disciplinary action for negligence pursuant to sections
27 8780(b), and 8761 in that Respondent did not properly sign and stamp the Lot Line Adjustment
28 (“LLA”) Map and Site Plan. The circumstances are as follows:

12. On or about March 30, 2003, homeowners "H" of property on Ocean View Avenue, contracted with a civil engineer for a LLA who subcontracted with Respondent as the land surveyor. Respondent submitted a map, a site plan and a legal description to the City of Newport Beach ("City"). Only the legal description was signed.

13. On or about August 27, 2003, the City Modification Committee conditionally approved the LLA application.

14. On or about September 5, 2003, the City returned the LLA for revisions/corrections.

15. On May 13, 2004, the LLA was recorded. The map, site plan and legal description were not signed and stamped by Respondent but by another Land Surveyor "C".

16. The Map and Site Plan prepared by Respondent lacked pre-LLA parcel configuration information and the post-LLA parcel Legal Description.

17. On or about August 13, 2004, the City filed a complaint with the Board: # 2004-08-240.

SECOND CAUSE FOR DISCIPLINE

(Negligence-Failure to Provide Pre-LLA Parcel Configuration Information and Post-LLA Legal Description)

18. Respondent is additionally subject to disciplinary action for negligence pursuant to section 8780(b), in that the Respondent failed to provide necessary information on the Map and Site Plan of the pre-LLA parcel configurations or the post-LLA Legal Description needed by the City as set forth in paragraph 16 above, and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Negligence—Delay or Failure to Timely Resubmit Corner Report or Record of Survey)

19. Respondent is subject to disciplinary action for negligence pursuant to sections 8780(b), 8767, and 8773.2(b) for delay or failure to timely resubmit a Corner Report ("C/R") and/or a Record of Survey ("R/S") concerning six boundary surveys he conducted in 2004 as set forth in paragraphs 20-25; four boundary surveys he conducted in 2006 as set forth in paragraphs 26-29 below; five boundary surveys he conducted in 2007 as set forth in paragraphs 30-34; seven boundary surveys he conducted and one "Not of Record" survey he conducted in 2008; and three

1 boundary surveys he conducted in 2009 as set forth in paragraphs 46-48; after being notified of
2 the City of Newport Beach's ("City") completion of its reviews and requests for resubmission.

3 The circumstances are as follows:

4 2004 Boundary Surveys

5 20. Respondent conducted a boundary survey in the City concerning lots 17, 18, 19 of
6 Block 7 of the re-subdivision of Section One of Balboa Island. On September 21, 2004,
7 Respondent submitted a draft C/R to the City for review which designated it # 2004-1544. On
8 September 27, 2004 the City completed its review of the draft C/R and sent a letter to Respondent
9 seeking revision/correction and referring to the resubmission time frame of 60 days under Section
10 8773.2(b).

11 a. On or about January 19, 2005, the City advised Respondent that it referred the matter
12 to the Joint Professional Practices Committee ("JPPC"). On or about April 18, 2005, the JPPC
13 sent a letter to Respondent. Respondent failed to timely resubmit the C/R.

14 b. On or about November 15 2005, JPPC filed a complaint with the Board: # 2004-11-
15 252.

16 21. In 2004, Respondent conducted a boundary survey of Lot 6 in Block 18 of East Side
17 Addition to the Balboa Tract in the City. On or about June 2, 2004, Respondent submitted the
18 draft C/R to the City for review which designated it # 2004-0970. On or about June 7, 2004, the
19 City completed its review and sent a letter with comments to Respondent, referring to the 60 day
20 resubmission timeframe under Section 8773.2(b).

21 a. On or about November 30, 2004, the City sent a letter to Respondent advising him
22 that the matter was being referred to the JPPC.

23 b. On or about January 30, 2005, the JPPC addressed a letter to Respondent concerning
24 the matter. The JPPC sent a second letter to Respondent on or about October 24, 2005.

25 c. On or about February 15, 2006, JPPC filed a complaint with the Board: # 2006-02-
26 031.

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1 d. On or about February 9, 2007, "DW," a private land surveyor, sent a letter to the
2 Board advising that he was retained to assist Respondent and that R/S 2007-1036 replaced
3 Respondent's C/R 2003-0970.

4 22. In 2004, Respondent conducted a boundary survey in the City concerning Lot 91 of
5 Tract 6621. On or about June 14, 2004, Respondent submitted the draft C/R to the City which
6 designated it # 2004-1015. On or about June 14, 2004, the City completed its review and
7 addressed a letter with comments to Respondent referring to the 60 day resubmission timeframe
8 in Section 8773.2(b).

9 a. On or about November 30, 2004, the City addressed a letter to Respondent advising
10 him that the matter was being referred to the JPPC.

11 b. On or about January 30, 2005, the JPPC addressed a letter to Respondent concerning
12 the matter and a second letter to Respondent on or about October 24, 2005.

13 c. On or about February 27, 2006, JPPC filed a complaint with the Board: # 2006-02-
14 047.

15 d. On or about February 9, 2007, "DW", a private land surveyor, sent a letter to the
16 Board advising that R/S 2007-1031 replaced Respondent's C/R 2004-1015.

17 23. On or about February 25, 2004, Respondent conducted a boundary survey of Lot 33
18 of Tract 1700 in the City. On or about May 3, 2004, Respondent submitted the draft C/R to the
19 City which designated it #2004-0762. On or about May 20, 2004, the City completed its review
20 and addressed a letter with comments to Respondent referring to the 60 day resubmission
21 timeframe in Section 8773.2(b). On or about July 22, 2004, the City sent a reminder letter to
22 Respondent. On or about September 1, 2004, the City addressed a letter to Respondent advising
23 him of the reference of the matter to the JPPC.

24 a. On or about September 3, 2004, the JPPC addressed a letter to Respondent and sent a
25 second letter to Respondent on or about February 12, 2005.

26 b. On or about February 28, 2006, JPPC filed a complaint with the Board: # 2006-02-
27 051.

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1 c. On or about February 9, 2007, "DW", a private land surveyor, sent a letter to the
2 Board advising that R/S 2007-1034 replaced Respondent's C/R 2004-0762.

3 24. In 2004, Respondent conducted a boundary survey in the City concerning Lot 19,
4 Block 11, East Newport Addition, M.M., 3/37. On or about February 3, 2004, Respondent
5 submitted the draft C/R to the City which designated it # 2004-0969. On or about June 7, 2004,
6 the City completed its review and addressed a letter with comments to Respondent referring to the
7 60 day resubmission timeframe.

8 a. On or about November 30, 2004, the City addressed a letter to Respondent reporting
9 reference of the matter to the JPPC.

10 b. On or about January 30, 2005, the JPPC addressed a letter to Respondent and sent a
11 second letter to Respondent on or about May 15, 2006.

12 c. On or about January 23, 2007, JPPC filed a complaint with the Board: # 2007-01-068.

13 d. On February 15, 2007, licensed surveyor "DW" advised the Board that R/S 2007-
14 1035 replaced Respondent's C/R 2004-0969.

15 25. On or about December 3, 2004, Respondent conducted a boundary survey of Lot 18
16 of Tract 3162 in the City. On or about November 28, 2005, Respondent submitted the draft C/R
17 to the City for review which designated it # 2005-2034. On or about February 9, 2006, the City
18 completed its review and sent a letter with comments requiring an R/S to Respondent. On or
19 about June 28, 2006, the City addressed a letter to Respondent advising of the referral of the
20 matter to the JPPC.

21 a. On or about September 5, 2006, the JPPC addressed a letter to Respondent and on or
22 about May 15, 2006, addressed a second letter to Respondent.

23 b. On or about June 17, 2007, Respondent addressed a letter to the Board advising that
24 he met with Orange County and it was determined that the C/R was sufficient. Respondent
25 enclosed the revised draft C/R.

26 c. On or about May 7, 2007, JPPC filed a complaint with the Board: # 2007-04-156.

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1 2006 Boundary Surveys

2 26. In 2006, Respondent conducted a boundary survey in the City and submitted a draft
3 R/S to the City for review, which designated the R/S as # 2006-1177. On or about November 13,
4 2006, the City completed its review and addressed a letter with comments for corrections to
5 Respondent and for resubmission of the R/S. On or about August 14, 2007, the City addressed a
6 reminder letter to Respondent.

7 a. On or about November 1, 2007, Respondent addressed a letter to the City reporting
8 his reasons for the delay of resubmission of the R/S and also a resubmission date of January 4,
9 2008.

10 b. On or about February 13, 2008, the City advised Respondent of the referral of the R/S
11 matter to the JPPC. On or about February 22, 2008, the JPPC addressed a letter to Respondent
12 and on April 21, 2008, the JPPC addressed a second letter to Respondent.

13 c. On or about July 16, 2008, JPPC filed a complaint with the Board: # 2008-07-258. On
14 July 22, 2008 the Board advised Respondent of further allegations and resubmission date of
15 August 21, 2008. Respondent failed to submit the R/S.

16 27. In 2006, Respondent conducted a boundary survey in the City of Newport Beach and
17 submitted a draft R/S for review. The City designated the draft R/S, # 2006-1138. On or about
18 September 25, 2006, the City completed its review of the draft R/S and addressed a letter to
19 Respondent with comments.

20 a. On or about November 1, 2007, Respondent addressed a letter to the City reporting
21 his reasons for the delay of resubmission of the R/S and also a resubmission date of December 28,
22 2007.

23 b. On or about September 24, 2008, the City addressed a reminder letter to Respondent.

24 c. On or about November 18, 2008, the City addressed a letter to Respondent advising
25 of the referral of the R/S matter to the JPPC.

26 d. On or about January 2, 2009, the JPPC addressed a letter concerning the matter to
27 Respondent. On or about February 7, 2009, the JPPC addressed a second letter to Respondent.
28 Respondent failed to resubmit the R/S.

- 1 e. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-102.
- 2 28. In 2006, Respondent conducted a boundary survey in the City of Newport Beach and
- 3 submitted the draft R/S to the City for review. The City designated the draft, R/S # 2006-1031.
- 4 a. On or about April 17, 2006, the City completed its review and addressed a letter with
- 5 comments to Respondent and referenced the 60 day resubmission timeframe for an R/S under
- 6 Section 8767.
- 7 b. On or about November 1, 2007, Respondent addressed a letter to the City reporting
- 8 his reasons for the delay on the R/S and a resubmission date of December 21, 2007.
- 9 c. On or about May 27, 2008, the City addressed a reminder letter to Respondent.
- 10 d. On or about October 6, 2008, the City addressed a letter to Respondent advising of
- 11 the referral of the R/S matter to the JPPC.
- 12 e. On or about October 14, 2008, the JPPC addressed a letter concerning the matter to
- 13 Respondent. On or about January 5, 2009, JPPC addressed a second letter to Respondent.
- 14 Respondent failed to resubmit the R/S.
- 15 f. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-093.
- 16 29. In 2006, Respondent conducted a boundary survey in the City of Newport Beach and
- 17 submitted a draft R/S to the City for review. The City designated the draft R/S, # 2006-1006.
- 18 a. On or about February 22, 2006, the City completed its review.
- 19 b. On or about November 1, 2007, Respondent addressed a letter to the City reporting
- 20 his reasons for the delay of the R/S and a resubmission date of December 14, 2007.
- 21 c. On or about May 21, 2008, the City addressed a reminder letter to Respondent.
- 22 d. On or about August 20, 2008, the City addressed a letter to Respondent advising of
- 23 the referral of the R/S matter to the JPPC.
- 24 e. On or about October 14, 2008, the JPPC addressed a letter to Respondent concerning
- 25 the matter. On or about January 5, 2009, the JPPC addressed a second letter to Respondent.
- 26 Respondent failed to resubmit the R/S.
- 27 f. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-092.

28 ///

1 2007 Boundary Surveys

2 30. In 2007, Respondent conducted a boundary survey concerning boundary control and
3 lots on Tract 772 in the City and submitted a draft R/S to the City for review. The City
4 designated the draft R/S # 2007-1188. On or about September 19, 2007, the City completed its
5 review and addressed a letter with comments to Respondent referencing the 60 day resubmission
6 timeframe for an R/S in section 8767. On or about October 6, 2008, the City addressed a
7 reminder letter to Respondent. On or about November 17, 2008, the City addressed a letter to
8 Respondent advising that the R/S matter was being referred to the JPPC.

9 a. On or about January 2, 2009, the JPPC addressed a letter to Respondent concerning
10 the R/S matter. On or about February 7, 2009, the JPPC addressed a second letter to Respondent.
11 Respondent failed to resubmit the R/S.

12 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-096.

13 31. In 2007, Respondent conducted a boundary survey in the City and submitted the draft
14 R/S to the City for review. The City designated the draft R/S # 2007-1184. On or about
15 September 19, 2007, the City completed its review and addressed a letter with comments to
16 Respondent and referred to the 60 day resubmission timeframe for an R/S in section 8767. On or
17 about October 6, 2008, the City addressed a reminder letter to Respondent. On or about
18 November 17, 2008, the City addressed a letter to Respondent advising of the referral of the R/S
19 matter to the JPPC.

20 a. On or about January 2, 2009, the JPPC addressed a letter concerning the R/S matter to
21 Respondent. On or about February 7, 2009, the JPPC addressed a second letter to Respondent.
22 Respondent failed to resubmit the R/S.

23 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-095.

24 32. In 2007, Respondent conducted a boundary survey in the City and submitted a draft
25 R/S to the City for review. The City designated the draft R/S # 2005-1149. The City addressed a
26 letter with comments to Respondent requiring resubmission.

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1 a. On or about November 1, 2007, Respondent addressed a letter to the City reporting
2 the reasons for his delay and a resubmission date of December 7, 2007 for the R/S. Respondent
3 modified the draft R/S and resubmitted it to the City. On or about March 6 2008, the City
4 completed its second review and addressed a letter with additional comments to Respondent
5 referring to the resubmission timeframe in section 8767. On or about October 6, 2008, the City
6 addressed a reminder letter to Respondent. On or about November 17, 2008, the City addressed
7 a letter to Respondent advising that the R/S matter was being referred to the JPPC.

8 b. On or about January 2, 2009, the JPPC addressed a letter concerning the R/S matter to
9 Respondent. On or about February 7, 2009, the JPPC addressed a second letter to Respondent.
10 Respondent failed to resubmit the R/S.

11 c. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-094.

12 33. In 2007, Respondent conducted a boundary survey in the City and submitted a draft
13 R/S to the City for review. The City designated the draft R/S # 2007-1134. On or about July 26,
14 2007, the City completed its review and addressed a letter with comments to Respondent referring
15 to the 60 day resubmission timeframe for a R/S in section 8767.

16 a. On or about November 1, 2007, Respondent addressed a letter to the City reporting
17 the reasons for his delay and a resubmission date of January 18, 2008 for the R/S.

18 b. On or about September 25, 2008, the City addressed a reminder letter to Respondent.

19 c. On or about November 18, 2008, the City addressed a letter to Respondent advising
20 him that the R/S matter was being referred to the JPPC.

21 d. On or about January 2, 2009, the JPPC addressed a letter to Respondent concerning
22 the R/S matter. On February 7, 2009, the JPPC addressed a second letter to Respondent.
23 Respondent failed to resubmit the R/S.

24 e. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-091.

25 34. In 2007, Respondent conducted a boundary survey in the City and submitted a draft
26 R/S to the City for review. The City designated the draft R/S # 2007-1131. On or about August
27 6, 2007, the City completed its review and addressed a letter with comments to Respondent and
28 referring to the 60 day resubmission timeframe for an R/S in section 8767.

- 1 a. On or about November 1, 2007, Respondent addressed a letter to the City reporting
2 the reasons for his delay and a resubmission date of January 11, 2008 for the R/S.
- 3 b. On or about September 25, 2008, the City addressed a reminder letter to Respondent.
- 4 c. On or about November 18, 2008, the City addressed a letter to Respondent advising
5 that the R/S matter was being referred to the JPPC.
- 6 d. On or about January 2, 2009, the JPPC addressed a letter concerning the R/S matter to
7 Respondent. On or about February 7, 2009, the JPPC addressed a second letter to Respondent.
8 Respondent failed to resubmit the R/S.
- 9 e. On or about February 7, 2009, JPPC filed a complaint with the Board: # 2009-04-090.
10 2008 Boundary Surveys
- 11 35. In 2008, Respondent conducted a boundary survey in the City and submitted a draft
12 R/S with "Monuments Found", to the City for review. The City designated the draft R/S # 2008-
13 1114. On or about September 10, 2008, the City completed its review and addressed a letter with
14 comments to Respondent. On or about December 31, 2009, the City addressed a reminder letter
15 to Respondent referring to the section 8767 resubmission time frame. On or about February 23,
16 2010, the City addressed a letter to Respondent advising of the referral to the JPPC.
- 17 a. On or about March 8, 2010, the JPPC addressed a letter to Respondent concerning the
18 R/S matter and on or about April 23, 2010 the JPPC addressed a second letter to Respondent.
- 19 b. On or about June 9, 2010, JPPC filed a complaint with the Board: # 2010-06-138.
- 20 36. In 2008, Respondent conducted a boundary survey and submitted the draft R/S with
21 "Monuments Found" to the City for review. The City designated the draft R/S # 2008-1106. On
22 or about August 21, 2008, the City completed its review and addressed a letter with comments to
23 Respondent. On or about December 29, 2009, the City addressed a reminder letter to Respondent
24 referring to the resubmission time frame in section 8767. On or about February 23, 2010, the
25 City addressed a letter to Respondent advising of the referral of the R/S matter to the JPPC.
- 26 a. On or about March 8, 2010, the JPPC addressed a letter to Respondent and on or
27 about April 23, 2010 the JPPC addressed a second letter to Respondent.
- 28 b. On or about June 9, 2010, JPPC filed a complaint with the Board: # 2010-06-139.

1 37. In 2008, Respondent conducted a boundary survey and submitted a draft R/S with
2 "Monuments Found" to the City for review. The City designated the draft R/S # 2008-1115. On
3 or about September 15, 2008, the City addressed a letter with comments to Respondent. On or
4 about December 31, 2009, the City addressed a reminder letter to Respondent referring to the
5 resubmission timeframe in section 8767 for a R/S. On or about February 23, 2010, the City
6 addressed a letter to Respondent advising of the referral of the R/S matter to the JPPC.

7 a. On or about March 8, 2010, the JPPC addressed a letter to Respondent concerning the
8 R/S matter. On or about April 23, 2010, the JPPC addressed a second letter to Respondent.

9 b. On or about June 9, 2010, JPPC filed a complaint with the Board: # 2010-06-140.

10 38. In 2008, Respondent conducted a boundary survey and submitted a draft R/S with
11 "Monuments Found" to the City for review. The City designated the draft R/S # 2008-1140. On
12 or about November 4, 2008, the City completed its review and addressed a letter with comments
13 to Respondent. On or about December 31, 2009, the City addressed a reminder letter to
14 Respondent. On or about February 23, 2010, the City addressed a letter to Respondent advising
15 of the referral of the R/S matter to the JPPC.

16 a. On or about March 8, 2010, the JPPC addressed a letter concerning the R/S matter to
17 Respondent and on or about April 23, 2010, addressed a second letter to Respondent.

18 b. On or about June 9, 2010, JPPC filed a complaint with the Board: # 2010-06-141.

19 39. In 2008, Respondent conducted a boundary survey and submitted a draft R/S noting
20 "Monuments Found" to the City for review. The City designated the draft R/S # 2009-1016. On
21 or about February 4, 2009, the City completed its review and addressed a letter with comments to
22 Respondent. On or about December 31, 2009, the City addressed a reminder letter to Respondent
23 concerning the R/S matter. On or about February 23, 2010, the City addressed a letter to
24 Respondent advising of the referral of the R/S matter to the JPPC.

25 a. On or about March 8, 2010, the JPPC addressed a letter to Respondent concerning the
26 R/S matter and on or about April 23, 2010, addressed a second letter to Respondent.

27 b. On or about June 9, 2010, JPPC filed a complaint with the Board: # 2010-06-142.

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1 40. In 2008, Respondent conducted a boundary survey in the City and submitted a draft
2 R/S to the City for review. The City designated the draft R/S # 2008-1080. On or about May 8,
3 2008, the City completed its review and addressed a letter with comments to Respondent and
4 referred to the 60 day resubmission timeframe in section 8767 for R/S. On or about October 6,
5 2008, the City addressed a reminder letter to Respondent. On or about November 17, 2008, the
6 City addressed a letter to Respondent advising of the referral of the R/S matter to the JPPC.

7 a. On or about January 2, 2009, the JPPC addressed a letter concerning the R/S matter to
8 Respondent. On or about February 7, 2009, the JPPC addressed a second letter to Respondent.
9 Respondent failed to resubmit the R/S.

10 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-101.

11 41. In 2008, Respondent conducted a boundary survey in the City and submitted a draft
12 R/S to the City for review. The City designated the draft R/S # 2008-1062. On or about May 8,
13 2008, the City completed its review and addressed a letter with comments to Respondent and
14 referring to the 60 day resubmission timeframe for R/S in section 8767. On or about October 6,
15 2008, the City addressed a reminder letter to Respondent concerning the R/S matter. On or about
16 November 12, 2008, the City addressed a letter to Respondent advising of the referral of the R/S
17 matter to the JPPC.

18 a. On or about January 2, 2009, the JPPC addressed a letter to Respondent concerning
19 the R/S matter and on or about February 7, 2009, addressed a second letter to Respondent.
20 Respondent failed to resubmit the R/S.

21 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-100.

22 42. On or about 2008, Respondent conducted a boundary survey in the City and submitted
23 a draft R/S to the City for review. The City designated the draft R/S # 2008-1061. On or about
24 May 8, 2008, the City completed its review and addressed a letter with comments to Respondent
25 referring to the 60 day resubmission timeframe for a R/S in section 8767. On or about October 6,
26 2008, the City addressed a reminder letter to Respondent. On or about November 17, 2008, the
27 City addressed a letter to Respondent advising of the referral of the R/S matter to the JPPC.

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1 a. On or about January 2, 2009, the JPPC addressed a letter to Respondent and on or
2 about February 7, 2009, addressed a second letter to Respondent. Respondent failed to resubmit
3 the R/S.

4 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-099.

5 43. In 2008, Respondent conducted a boundary survey in the City and submitted the draft
6 R/S to the City for review. The City designated the draft R/S # 2008-1018. On or about
7 February 20, 2008, the City completed its review and addressed a letter with comments to
8 Respondent referring to the resubmission timeframe for a R/S in section 8767. On or about
9 October 6, 2008, the City addressed a reminder letter to Respondent. On or about November 17,
10 2008, the City addressed a letter to Respondent advising of the referral of the R/S matter to the
11 JPPC.

12 a. On or about January 2, 2009, the JPPC addressed a letter concerning the R/S matter to
13 Respondent and on or about February 7, 2009, addressed a second letter to Respondent.
14 Respondent failed to resubmit the R/S.

15 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-098.

16 44. In 2008, Respondent conducted a boundary survey in the City and submitted a draft
17 R/S to the City for review. The City designated the draft R/S # 2008-1016. On or about
18 February 5, 2008, the City completed its review and addressed a letter with comments to
19 Respondent referring to the resubmission timeframe for a R/S in section 8767. On or about
20 October 6, 2008, the City addressed a reminder letter to Respondent. On or about November 17,
21 2008, the City addressed a letter to Respondent advising of the referral of the R/S matter to the
22 JPPC.

23 a. On or about January 2, 2009, the JPPC addressed a letter to Respondent concerning
24 the R/S matter and on or about February 7 2009, addressed a second letter to Respondent.
25 Respondent failed to resubmit the R/S.

26 b. On or about April 6, 2009, JPPC filed a complaint with the Board: # 2009-04-097.

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1 2008 "Not of Record" Survey

2 45. On or about September 23, 2008, another land surveyor conducted a field survey
3 southeast of Goldenrod Avenue to establish and monument the boundaries Lot 2 Block 434 of the
4 Corona del Mar Tract. During that survey, a cluster of pins was found at the intersection of
5 Second Avenue and an alley that were not of record. On or about September 24, 2008, the
6 surveyor prepared and submitted a C/R which included the "Not of Record" monuments as found.
7 Previously, Respondent had surveyed and monumented an intersection of Second Avenue and an
8 alley 150 feet southeast of Goldenrod. Respondent had not submitted an R/S or C/R after setting
9 the monuments. On or about January 2, 2009, the JPPC addressed a letter to Respondent
10 directing him to file an R/S or C/R concerning the found monuments. On or about February 7,
11 2009, the JPPC addressed a second letter to Respondent.

12 a. On or about June 5, 2009, Respondent communicated with the Board.

13 b. On or about April 20, 2009, JPPC filed a complaint with the Board: # 2009-04-089.

14 2009 Boundary Surveys

15 46. In 2009, Respondent conducted a boundary survey of Lot 850, Tract 907, City of
16 Newport Beach, in Orange County and submitted a draft R/S to the County. The County
17 designated the draft R/S # 2009-1053. On or about April 30, 2009, the County Public Works
18 Senior Land Surveyor completed her review of the draft R/S and sent a letter to Respondent with
19 comments and request for resubmission. On or about April 29, 2010, the County sent a reminder
20 letter to Respondent, referring to Section 8767 time frames. On or about July 6, 2010, the County
21 sent a letter to Respondent notifying him of the reference of the matter to the Orange County
22 JPPC.

23 a. On or about July 17, 2010, the JPPC sent a letter to Respondent concerning the matter
24 and on or about September 10, 2010, sent a second letter to Respondent notifying Respondent of
25 no response to the July 17, 2010, letter and requesting resubmission or the JPPC would refer the
26 matter to the Board.

27 b. On or about January 14, 2011, the Board notified Respondent that JPPC filed a
28 complaint in the matter: # 2011-01-007.

1 47. In 2009, Respondent conducted a boundary survey of all of Lot 5 and a portion of Lot
2 3 of Block 541 of Corona Del Mar in Orange County and submitted a draft R/S to the County.
3 The County designated the draft R/S # 2009-1120. On or about November 19, 2009, the Orange
4 County Public Works Senior Land Surveyor completed her review of the draft R/S and sent a
5 letter to Respondent with comments and seeking resubmission. On or about April 30, 2010, the
6 County sent a reminder letter to Respondent referring to Section 8767 time frames. On or about
7 July 6, 2010, the County sent a letter to Respondent notifying him of the matter's referral to the
8 Orange County JPPC.

9 a. On or about July 17, 2010, the JPPC sent Respondent a letter requesting resubmission
10 of the R/S.

11 b. On or about September 10, 2010, the JPPC sent a second letter to Respondent.

12 c. On or about December 28, 2010, the JPPC filed a complaint with the Board: # 2011-
13 01-008.

14 d. On or about January 14, 2011, the Board notified Respondent of complaint # 2011-
15 01-008.

16 48. In 2009, Respondent conducted a boundary survey of all of Lot 30 and a portion of
17 Lot 28 of Block 143 of Corona Del Mar in Orange County and submitted a draft R/S. The
18 County designated the draft R/S # 2009-1134. On or about December 7, 2009, the Orange County
19 Public Works Senior Land Surveyor completed her review of the draft R/S and sent a letter to
20 Respondent with comments and requesting resubmission. On or about April 30, 2010, the
21 County sent a reminder letter to Respondent referring to the time frames in Section 8767. On or
22 about July 6, 2010, the County notified Respondent that the matter was being referred to the
23 Orange County JPPC.

24 a. On or about July 17, 2010, the JPPC sent a letter to Respondent requesting
25 resubmission of the R/S.

26 b. On or about September 10, 2010, the JPPC sent a second letter to Respondent.

27 c. On or about December 28, 2010, the JPPC filed a complaint with the Board, # 2011-
28 01-009.

1 d. On or about January 14, 2011, the Board sent a letter to Respondent notifying him of
2 complaint # 2011-01-009.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Negligence—Failure to File Record of Survey (“R/S”) or Corner Record (“C/R”))

5 49. Respondent is subject to disciplinary action for negligence pursuant to sections
6 8780(b), and 8762 for failing to file an R/S or C/R after being directed to do so in “Found
7 Monuments” incidents from a field survey in 2009 as set forth in paragraphs 50-53. The
8 circumstances are as follows:

9 50. On or about February 22, 2009, two incidents resulted from a field survey that
10 Respondent performed along 1st Avenue that was conducted in the City of Newport Beach
11 (“City”). During the survey, Respondent located a cluster of pins, constituting “Found
12 Monuments” along 1st Avenue, near its intersection with an alley southeast of Fernleaf Avenue.
13 On or about March 11, 2009, Respondent submitted a C/R to the City. On or about April 6, 2009,
14 the JPPC addressed a letter to Respondent directing him to submit an R/S or C/R regarding the
15 found monuments along 1st Street. On or about May 15, 2009, the JPPC addressed a second
16 letter to Respondent directing him to submit an R/S or C/R regarding the monuments found on 1st
17 Street.

18 51. On or about July 31, 2009 and August 6, 2009, JPPC filed a complaint with the Board
19 regarding the incident: # 2009-07-245.

20 52. The second incident during the February 22, 2009 survey occurred when Respondent
21 found another cluster of pins constituting “Found Monuments” along 2nd Avenue near its
22 intersection with an alley southeast of Goldenrod Avenue. On or about March 11, 2009,
23 Respondent submitted a C/R to the City. On or about April 6, 2009, the JPPC addressed a letter
24 to Respondent directing him to file an R/S or C/R regarding the found monuments along 2nd
25 Street. On or about May 15, 2009, the JPPC addressed a second letter to Respondent regarding
26 the monuments found on 2nd Street.

27 53. On or about July 31, 2009 and August 6, 2009, a complaint was filed with the Board
28 regarding the incident: # 2009-07-246.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers, Land Surveyors, and Geologists issue a decision:

1. Revoking or suspending Land Surveyor License Number L 6723, issued to Matthew Kenneth Gilbert;
2. Ordering Matthew Kenneth Gilbert to pay the Board for Professional Engineers, Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/8/11

Original Signed

Joanne Arnold
Interim Executive Officer
Board for Professional Engineers, Land Surveyors, and
Geologists
Department of Consumer Affairs
State of California
Complainant

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